

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Criminal Action No.
10-CR-20721

vs.

HON. MARK A. GOLDSMITH

TIMOTHY DEQUAN RICE,

Defendant.

ORDER REGARDING FAILURE TO COMPLY WITH PRIOR ORDER

On February 14, 2013, the United States Court of Appeals for the Sixth Circuit remanded this matter for a determination whether Defendant “satisfied the standard contained in Rule 4(b)(4) for an extension of the time to appeal based on excusable neglect.” Sixth Circuit Order of February 14, 2013 at 3 (Dkt. 92). As part of that determination, this Court is to determine whether Defendant “committed excusable neglect when he mailed his notice of appeal without proper postage.” Id.

On March 1, 2013, the Court issued an order requiring Defendant to submit, by March 22, 2013, an affidavit or declaration, along with a supporting brief, regarding the issue to be decided in these remand proceedings:

The Court orders Defendant to file an affidavit or declaration signed under penalty of perjury setting forth all facts in support of his contention that the time to file a notice of appeal should be extended based on excusable neglect. In particular, the affidavit or declaration must recite what efforts Defendant made to timely mail his notice of appeal, the manner in which the amount of postage was determined, and how and by whom it was affixed to the envelope containing his notice of appeal. Defendant’s affidavit or declaration shall be filed, along with a supporting brief, on or before March 22, 2013.

Order of March 1, 2013 (Dkt. 93).

Defendant has not filed any of the required documents and the deadline has now passed. In fact, the Court has heard nothing from Defendant. The Court's order directing Defendant to file an affidavit or declaration and a supporting brief made these filings mandatory, not optional.

Defendant shall file the required documents on or before April 10, 2013. If he fails to do so, counsel for Defendant, Charles A. Grossmann, shall appear before the Court on April 11, 2013 at 1:30 p.m. and explain why the required documents were not filed.

Defendant and his counsel are advised that failure to file timely the required documents, or to explain the non-filing in a satisfactory manner, may lead the Court to conclude that Defendant cannot, in good faith, set forth facts establishing excusable neglect justifying an extension of time in which to file a notice of appeal.

SO ORDERED.

Dated: April 3, 2013
Flint, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on April 3, 2013.

s/Deborah J. Goltz
DEBORAH J. GOLTZ
Case Manager